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NEVADA'S PROPOSED STATUTE ACCORDING TO CONVICTED MURDERERS CHOICE IN THE MODE OF EXECUTING THE DEATH PENALTY.

The bad eminence the State of Nevada has achieved in its divorce legislation will not be derogated from if its legislature adopts a proposed statute allowing one condemned to death to choose one of two methods for the carrying of the sentence into effect. Indeed, that proposal, if legal at all, would seem, if possible, to give the state a yet higher niche in its notoriety.

In its divorce legislation the cupidity of its population is the only semblance of justification for an unholy traffic in marital differences among those in whom the state is otherwise wholly unconcerned.

The divorce legislation is worse by far than that which greed suggests as to corporation charters, in that the latter deals in insensate things or has reference purely to material affairs, while the former may have pursuing it the undermining of citizenship in sister sovereignties and the worst kind of orphaning of children. This is relieved possibly by a sort of legislative cognizance, that those who take advantage of it are largely negligible quantities as citizens or parents. But even, then, we behold an American State prostituting its power in favor, largely, of a sort of criminal class outside of its borders.

But returning to our mutton, let us consider the proposed legislative freak we started to discuss. It would have a worthy background in such materialism as we have referred to. In addition, it would fly in the face of that morality in the common law, which calls a suicide *felo de se,* whose crime is expiated by forfeiture of his estate.

In McMahon v. State, 53 So. 89, the Alabama Supreme Court affirmed the conviction of murder of one whose defense was that deceased took his own life. The trial court instructed that "if the death was the result of preconcert * * * between the men, that each take his own life, then the survivor would be guilty of murder in the first or second degree."

This proposition was held to involve the question whether suicide was a felony. It was said: "At common law self-murder was a felony; but since with us no forfeiture of estate penalizes the felon, and since the dead cannot be punished, no penalty can be inflicted on the self-destroyer. But collateral consequences may, and do, upon occasion, depend upon the feloniousness of self-murder. * * * That intentional self-destruction by one without avoiding mental distemper is *felo de se* is a generally recognized criminal doctrine."

The Alabama decision is wholesome, just as every implication to be drawn from the Nevada statute is pernicious, consistent, however, we may say, with the tenderness of its divorce legislation for the gaily bedecked and bedizzened, who seek its hospitable doors.

But, of course, the supposedly sufficient answer to all of this is that, death impending, there is no choice in regard to life at all, and the selection of the means of death is not the choosing of death.

This may be true, in a strict sense, or it may not be true. Let us take the alternative proposed. The felon will have choice of death by hanging or death by poison. If he elects poison, he is supplied with hydrocyanic acid sufficient in quantity to cause instantaneous death. If he makes no choice, he is hung. It is well known that hanging may not produce instanta-

neous death. Indeed, it has been known to prove abortive and always it has been the custom for experts to say when death has supervened before the body is cut down. Therefore, when a state, which looks upon hanging as a civilized mode of execution and invites one sentenced to death, to kill himself more expeditiously than the state will kill him, it invites him to self-murder.

Suppose that a state extended choice in this matter by providing death by torture, slow but absolutely certain to the end intended. Would not a man having the liberty of choice be taking his own life, if he forestalls the appreciable period he would live during the torture?

Among Christians generally it is regarded as heinous in morals that one should shorten his own life to escape from trouble. There may be, and undoubtedly are some who do not thus regard self-destruction. They conceive that their lives belong to them to do with whatsoever they will. But a man who so believes seems to us bereft of a proper sense of responsibility to others.

But whichsoever view is correct, no state has the right to treat with contempt the conscientious scruple, that no one should compass his own death before his allotted time to die. This assertion is not met by saying, that those who thus believe should refuse to elect.

The point is, that law must not in the supreme moment of a man's life hold out a temptation to rush himself into eternity, telling him impliedly there is nothing in morals to forbid his doing this.

Furthermore, it may be asked, is there any mercifulness in the privilege of choice? Why should the state hang before a doomed man's eyes what would but add to the misery of his situation, and correspondingly afflict those who would weep over his death? Any law smacks of barbarity which may tend to interfere with the resignation the condemned and his relatives may seek in such an extremity. The sentiment behind it is maudlin in part and excessively materialistic as to the rest.

Is there, or not, a serious question here of the validity of such legislation? A judgment may in a civil suit give alternative relief, but it will hardly be contended that a sentence may inflict alternative punishment, except that in misdemeanor, imprisonment may be the alternative of refusal to pay a fine. This, however, is not a real alternative. It presupposes inability to pay the fine. But in a sentence of death the physical pain involved in its being carried into effect is part and parcel of the sentence, as is also whatever mental suffering is endured. If one method involves less of either than the other, there is an alternative that suggests a want of uniformity in the sentence of death. If there is no material difference in the modes of infliction, then why would the law be enacted? The very enactment of the law presupposes that it speaks regarding a matter of substance and not of form.

NOTES OF IMPORTANT DECISIONS

HUSBAND AND WIFE—EXCEPTION TO THE RULE OF NON-LIABILITY OF WIFE FOR OFFENSE COMMITTED IN THE HUSBAND'S PRESENCE.—We annotated in 72 Cent. L. J. 139, the "Presumption of Coercion by Husband where Wife Commits Crime Prima Facie Only." In this note we referred to State v. Mamie Jones, 53 W. Va. 6, 3, 45 S. E. 916, and commented on what the West Virginia court quoted from 1 Hawkins P. C. C. §12, as authority for an exception to the common law rule of presumptive coercion, where the offense lay in the keeping by the wife of a house of ill-fame. Since that note was published there has appeared the case of State v. Gill, 129 N. W. 821, decided by Supreme Court of Iowa, where there was a conviction of husband and wife jointly indicted for keeping a house of ill fame. This conviction is affirmed.

The court says the rule of presumptive coercion "has no application to the crime of keeping a bawdy house or house of ill fame, for this is an offense as to the government of the house in which the wife has the prin-

cipal share, and also such an offense as may generally be presumed to be managed by the intrigue of her sex?" The opinion cites Hawkins, supra, and the case we annotated.

We thought there was slim authority cited, and it seemed to us that what was stated as the reason for the exception left much to be explained for its soundness, if the rule is to exist at all.

In this Iowa case it seems to us that the exception really proceeds to an absurdity. Thus the husband is convicted of keeping a house of ill-fame and the wife is convicted along with him. If the wife has "the principal share," the husband was something like an accessory. If he was the head of the house and running it as a house of ill fame, what greater presumption could there arise of coercion?

It may be that in fact there exists, as we noted was said by a Nebraska court, little reason for now enforcing the common law presumption of coercion, but if it is recognized as a rule to be observed, certainly it ought to apply to prevent a husband and wife from being jointly indicted and both convicted for the commission of one and the same offense, both being principals.

MONOPOLIES—COMBINATION BETWEEN TWO CORPORATIONS EFFECTED BY THE COMMON AGENT OF BOTH.—If the decision by New Mexico Supreme Court in the case of United States v. Santa Rita Stone Co. et al., 113 Pac. 620, is correct, then a door is opened in the Sherman Act for a smooth escape by corporations from its penalties.

That case shows that a mining company and a store company were carrying on business in New Mexico with one Deegan as the general agent of each. "No other officer of either company lived or was in New Mexico during the period named in" an indictment against them for a violation of section 3 of the Sherman Act or at any time thereafter. Their scheme seemed to be that the store company was planned to sell merchandise to employees of the mining company and the indictment charged that the two companies "conspired to coerce and compel the employees" of the mining company to trade exclusively with the store company. It seems also that this agent reported in his twofold capacity to one man who alone had charge of the New York offices of both corporations.

The court, after saying "there was no evidence that any officer or agent of either of appellants (other than Deegan) participated in or had knowledge of the acts of which complaint is made," set aside their conviction in the court below upon the following reasoning: "Undoubtedly, a conspiracy might be formed by two corporations acting through agents, yet there must be more than one agent or more than one person actually engaged in the formation of the conspiracy. In this case a conspiracy was not formed, because of a lack of persons. Deegan could not conspire with himself; neither could two or more corporations conspire alone by means of Deegan. Had some other officer or agent participated in, or had knowledge of, the scheme, then a conspiracy might have been formed between the two defendant corporations."

The writer of this note contended in 71 Cent. L. J. 421, that the indictability of a corporation for any other crime than that of misfeasance or nonfeasance in nuisance was both illogical and impolitic. Nevertheless, if corporations are indictable like natural persons, then the New Mexico decision would seem to be wrong.

Suppose Deegan were representing two natural persons as his principals, would the case fail because he was their common agent? We think not. If the court could not say there was "a lack of persons" in such a case, why should it be able to say this, if the principals are two corporations?

The Sherman Act condemns "every contract, combination in, form of trust or otherwise or conspiracy." Is there a not a "combination" here such as is denounced? Does it fail because an agent cannot represent two principals dealing with each other? That rule is one for principals to take advantage of in repudiation of a contract. It is not one for the cloaking of crime. The decision quotes Judge Sanborn that: "The union of two or more persons, the conscious participation in the scheme of two or more minds, is indispensable to an unlawful combination, and it cannot be created by the action of one man alone."

But in modern criminal law it has been evolved that a corporation is a *man* in a criminal sense and, if it is, Judge Sanborn's rule does not apply to this case. We are not surprised, however, that what seems to us a false and impolitic premise should lead to the conclusion the New Mexico court adopts. The trouble about the decision is that, though corporations in a combination are punishable the same as individuals, the latter cannot have a common agent to help them avoid punishment, while the court, imputing criminal intent to corporations, still does not hold them responsible for what is imputed. The fiction should either bear its logical burden or be repudiated.

RIGHTS OF HOLDERS IN DUE COURSE UNDER THE NEGOTIABLE INSTRUMENTS LAW.

Except in a few cases which need not be specified here, wagering and gaming are not prohibited by the common law,[1] and therefore negotiable paper executed and delivered in payment of bets and gambling debts is by the law merchant, or common law, collectible.[2]

The prohibition by statute of that which is the consideration of a negotiable instrument does not invalidate such instrument in the hands of a holder in due course,[3] unless the statute expressly declares that all contracts based on such prohibited consideration shall be void.[4]

In England and all or nearly all of our states statutes have been enacted which prohibit wagering, gaming and usury and declare to be null and void all contracts to pay bets, gambling debts or usurious interest. Under these statutes the courts have uniformly decided that holders in due course of bills of exchange, checks and promissory notes usurious in their inception or void because of the illegal consideration of a wager or gaming transaction have no protection.[5]

(1) Moon v. Durden, 2 Ex. 22; Emery v. Richards, 14 M. & W. 728; Good v. Elliott, 3 Term Rep. 693; Brandon v. Hibbert, 4 Camp. 37; Bland v. Collett, 4 Camp. 157; Da Costa v. Jones, 2 Cowp. 731; Zeltner v. Irwin, 25 App. Div. 228, 12 Miscl. Rep. 13; Morgan v. Richards, 1 Browne, 171.

(2) Sherbon v. Colebach, 2 Vent. 175; Johnson v. Lansley, 12 C. B. 468; 74 E. C. L. R. 467.

(3) Vallett v. Parker, 6 Wend. 615; Haight v. Joyce, 2 Cal. 64, 56 Am. Dec. 311. This rule also governs cases of patent right, pedlar's and lightning rod notes which do not, as required by statute, show on their face the consideration for which they were given; Smith v. Wood, 111 Ga. 221, 36 S. E. 649; Arndt v. Sjablom, 131 Wis. 642, 10 L. R. A., (N. S.) 842, 111 N. W. 666; Harmon v. Hagerty, 88 Tenn. 705, 13 S. W. 690; Pope v. Hanke, 155 Ill. 617; Crawford v. Spence, 92 Mo. 498.

(4) See cases cited in notes 3, 5, 6 and 7.

(5) Lowe v. Waller, Douglas, 736; Bowyer v. Bampton, 2 Strange, 1155; Manning v. Manning, 8 Ala. 138; Wyatt v. Wallace, 67 Ark. 575, 55 S. W. 1105; Cunningham v. Nat. Bank, 71 Ga. 400; Little v. Stokely, 99 Ga. 306, 25 S. E. 650; Gould v. Armstrong, 2 Hall, 266; Traders' Bank v. Alsop, 64 Ia. 97; Town of Eagle v. Kohn, 84 Ill. 292; Abrams v. Camp, 4 Ill. (3 Scam.) 290; Voreis v. Nussbaum, 131 Ind. 267, 16 L. R. A. 45; Sondheim v. Gilbert, 117 Ind. 71, 18 N. E. 687, 5 L. R. A. 432, 10 Am St. Rep. 23; Bohon v. Brown, 101 Ky. 354, 41 S. W. 273; Cazet v. Field, 9 Gray, 329; Bayley v. Taber, 5 Mass. 286; Holman v. Ringo, 36 Miss. 690; Claflin v. Boorum, 122 N. Y. 385; Unger v. Boas, 13 Pa. 601; Lloyd v. Leisenring, 7 Watts, 294; Mobley v. Porter, 54 S. W. 655, (Tex. Civ. App.).

The Negotiable Instruments Law, which has been adopted by Congress and forty or more of our states and territories, contains the following provisions:

Sec. 55. *When Title Defective.*—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtains the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Sec. 57. *Rights of Holder in Due Course.*—A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof, against all parties liable thereon.

Sec. 196. *Law Merchant; When Governs.*—In any case not provided for in this act the rules of the law merchant shall govern.

Have these sections enlarged the rights of a holder in due course of a bill, check or note prohibited and declared void by statute, or is such a holder still in the situation of the payee, or of a transferee who took the instrument with notice of the illegal consideration? Notwithstanding the explicit language of Sec. 57, the courts of last resort that have passed upon this question have answered it diversely in two cases that clearly set forth their views as to the re-

pealing effect of the foregoing sections of the Negotiable Instrument Law.

In Wirt v. Stubblefield,[6] plaintiff was the holder in due course of a note given in payment of money alleged to be due from defendant on a wager on the fluctuations in prices of certain stock. Judgment on the note was rendered for plaintiff and was affirmed by the Court of Appeals. After deciding that the old English statutes of 16 Car. 2, and 9 Anne, against gaming were a part of the law of the District of Columbia, the court held that in so far as they relate to or may affect negotiable instruments, they were repealed by force of the act of Congress of January 12, 1899, known as the Negotiable Instrument Law. In speaking of this act Alvey, J., said: "The great object sought to be accomplished by the enactment of the statute was, to free the negotiable instrument, as far as possible, from all latent or local infirmities that would otherwise inhere in it, to the prejudice and disappointment of innocent holders, as against all of the parties to the instrument professedly bound thereby. This clearly could not be effected so long as the instrument was rendered absolutely null and void by local statute, as against the original maker or acceptor; as is the case by the operation, indeed, by the express provision, of the statutes of Charles and Anne. For although the statutes declare that all bills and notes made upon gaming considerations shall be void to all intents and purposes, yet it has never been allowed as a valid objection to an action against the drawer or indorser that the bill or note was accepted or made on a gambling consideration This construction of the statutes has proceeded upon the ground that it was necessary to further the object of the statutes; for to exempt the drawer of an indorser from suit might assist a winner, whom the statutes meant to punish, not to protect. Edwards v. Dick, 4 B, & Ald. 212. But as against the maker of a note or the acceptor of a bill, the instrument was absolutely null and void, even in the hands of an innocent holder for value, taking the paper in due course before maturity. This was certainly an evil that required correction; and the necessity for the correction is founded upon a just commercial policy of sustaining the credit and circulation of negotiable instruments, and, falls clearly within the object and policy of the act of Congress of January 12, 1899. . . . . It is difficult to conceive, if we bear in mind the object and policy intended to be promoted by, as well as the entire scope and express provisions of, the "Negotiable Instrument Law," that the framers of that act ever intended to save and preserve unrepealed, as part of the law governing negotiable instruments, the old English statutes of 16 Car. 2, and 9 Anne, against gaming. On the contrary, it was most clearly among the objects and purposes of that act, to get rid of all such impediments and hindrances to the circulation of negotiable instruments as had been created by those old statutes, and to embody the entire law upon the subject, as far as practicable, into one well digested and consistent act. . . . . It is quite clear that the act of Congress was intended to cover the whole subject of negotiable instruments as far as it could be done by statute; and therefore to exclude the operation and effect of former statutes like those of Charles and Anne. But there is manifest inconsistency or repugnancy, as we have shown, between the effect and operation of those old English statutes, so far as they effect negotiable instruments, and the provisions and policy of the "Negotiable Instrument Law" of Congress; and this construction of the latter act is strongly fortified by the general provision of that act which declares, that "In any case not provided for in this act the rules of the law merchant shall govern." We know that no such prohibition or nullity as that declared in the old statutes against gaming has any recognition in the law merchant. The law merchant is a system of commercial law founded upon the most liberal and enlarged customs and usages, for the promotion of trade, and which is applied to for the decision of the causes of merchants, by such

(6) 17 App. Cas. D. C. 283.

general rules as obtain in all commercial countries, and is, therefore, wholly inconsistent with the gambling statutes."

Alexander v. Hazelrigg,[7] was an action brought by a holder in due course for the collection of a note given in payment of a bet on a horse race. Defendant, the maker, set up the illegal consideration as a defense and recovered judgment. In affirming the judgment the Court of Appeals alluded to Wirt v. Stubblefield, *supra,* and in declining to follow it said: "The real question to be determined is whether a negotiable note executed for money lost on a bet or wager can be successfully defended, when owned and held by an innocent purchaser for value without notice of the infirmity or illegal consideration of the note. As we understand the appellant's petition, he concedes that prior to the passage and the taking effect of the negotiable instrument act, referred to, such a note could be successfully defended in the hands of an innocent purchaser; but since that act took effect he contends that all laws inconsistent with that act stood repealed. He claims that under section 57, the question of consideration cannot be inquired into as against the holder in due course. He takes the paper free from defenses. . . . . It has been the policy of this State to suppress gambling, and the statutes making gaming contracts void are founded upon what the Legislature has for many years deemed to be sound public policy. It is inconceivable that the General Assembly, in the passage of the act of 1904, for the protection of innocent holders of negotiable instruments, intended to or did repeal section 1955, Ky. St. 1903, which declares all gaming contracts void. In our opinion the disappointment now and then of an innocent holder of a negotiable instrument would not be as hurtful and injurious to the best interests of the State as the removal of the ban from gaming contracts."

Which of these cases will be followed in the State of New York is uncertain, but expressions of individual opinions of several of the judges indicate that the rule of Wirt v. Stubblefield will be adopted. In Broadway Trust Co. v. Mannheimer,[8] the opinion of the court closes with the following paragraph: "As to the defense of usury, it is sufficient to say that I find from the evidence that the notes in suit were valid obligations in the hands of the original payees. But if otherwise, the plaintiff in this action was a holder for value in due course and took the notes free from any defenses available to prior parties among themselves. Neg. Inst. Law, Sec. 96. (L. 1897, Chap. 612)."

The note sued on in Schlesinger v. Kelly,[9] was usurious in its inception. Plaintiff was the receiver of a bank which was conceded to be a holder in due course of the note, and he was allowed to recover under state banking laws relating to usury. Laughlin, J., concurred in affirmance, on the ground that under the Negotiable Instrument Law, a holder in due course is not subject to the defense of usury, saying: "It is, I think, evident that the purpose of the commission representing the various States of the Union in preparing the draft of the Negotiable Instrument Law, and of the various Legislatures in enacting it, will be thwarted if Section 96 (Sec. 57, *supra*) is to receive the construction that even as against *bona fide* holders in due course for value the maker of the note may successfully defend upon the ground that in the inception of the note some local law was violated. The force and effect of the statutes against usury will not be seriously impaired by the construction which, I think, should be given to the Negotiable Instruments Law. The usury laws remain in full force, but to facilitate the free circulation of negotiable paper by protecting holders thereof in due course for value in their right to enforce the same, the usury laws are to that extent superseded by the provisions of section 96 of the Negotiable Instruments Law. Of course, it was perfectly competent for the Legislature to do this The only ques-

(7) 123 Ky. 677; 97 S. W. 324.

(8) 47 Misc. Rep. 415. (N. Y., 1905).
(9) 114 App. Div. 546. (N. Y., 1906).

tion is whether or not it so intended, and I am of the opinion that it did."

In a similar case, Schlesinger v. Gilhooly,[10] Willard Bartlett, J., concurred on the ground that a holder in due course of an usurious note is protected by the Negotiable Instruments Law; but Cullen, C. J., expressed the opinion that said law had not repealed the statutes against gaming and usury as to holders in due course.

Schlesinger v. Lehmaier,[11] was an action brought for the collection of an usurious note by a bank which had taken it with notice of the usury. Haight, J., in deciding against the bank said: "In the Negotiable Instruments Law it is expressly provided that a holder, who becomes such before maturity in good faith and for value without notice of any infirmity, holds the same "free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce the payment of the instrument for the full amount thereof against all parties liable thereon." Here we have the legislative intent expressed in clear and unmistakable language. It establishes a just and proper rule which protects the bank in making purchases of commercial paper in good faith before maturity, for value and without notice of infirmity. But where it purchases with actual knowledge of the infirmity or defect, or knowledge of such facts that its action in taking the instrument amounted to bad faith, it is not protected."

The reasons why the appellate courts of Kentucky and the District of Columbia disagreed upon the question under consideration appear in the above quotations from their opinions. In Kentucky the protection of the maker of a gambling or usurious note and the discouragement and suppression of gambling, betting and usury are regarded as of paramount importance; and in the District of Columbia the free circulation of negotiable paper is believed to be more important. The latter view is that of the framers of the Negotiable Instruments Law, and the one that many courts have long desired to adopt, for they have enforced the old rule reluctantly.[12] And it seems more just to protect holders in due course of commercial paper than the makers of unlawful instruments. It is likely, however, and regretable too, that the courts will further divide as they pass upon this question, and thus, in one respect at least, defeat the purpose of the Negotiable Instruments Law, namely, uniformity of the law throughout our country.

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(10) 189 N. Y. 1; affirming Schlesinger v. Gilhooly, 116 App. Div. 914.

(11) 191 N. Y. 69, 83 N. E. 657, 16 L. R. A. (N. S.) 626.

(12) Sullivan v. German National Bank, 18 Colo. App. 99; Bank v. McClelland, 9 Colo. 611; Story on Promissory Notes, Sec. 192 (7 ed.).

GLIMPSES OF ILLINOIS LAW AND PROCEDURES.

To sustain the view that there are disturbing causes in Illinois arising from ignorance of fundamental law, we shall call attention to an incongruous, erratic and singular case when viewed in the light of elementary law.

"It is no consideration for a man to do what in law he is already bound to do." In Stilk v. Myrick, L. C. 213, 3 Gr. & Rud., sailors were bound to do all in their power to save a ship and cargo. To dissuade the sailors from abandoning the ship in a severe storm, the captain promised them extra pay to stay with the ship and save it if possible. In an action to recover the *extra* compensation offered them, it was held they could not recover, upon the principle first above stated. Many cases sustain this view. We know of none denying it except Bishop v. Busse, (69 Ill. 403), which is next stated.

In Bishop v. Busse, Busse contracted to build a building. Before its completion, building material rose in price and Busse threatened to abandon his contract unless more than the stipulated price was paid him. He claimed that the owner (Bishop) prom-

ised to pay him (Busse) more if he would not abandon the contract. Bishop denied the second agreement. However, a jury decided against Bishop, and upon this verdict judgment was entered against him.

Conceding that pleadings are the juridical means of presenting a subject-matter to a court for its consideration; that for this purpose they must be true; also that pleadings are to limit issues and to narrow proofs; also that Stilk v. Myrick expresses the law, then how does Bishop v. Busse appear? Then the pleading would show the original contract and the additional contract to pay more than was first agreed upon. To this statement as a ground of recovery, the defendant would demur. Here would arise a question of law which should be decided in accordance with the Stilk case. Such being the pleadings and the law, the case could be speedily decided. But in Illinois, general allegations and the general denial are tolerated, and the functions of pleadings as above premised are not well settled, and the result is that cases resting on such a state of facts as Bishop v. Busse are developed before a court, with issues of fact, and these are submitted to a jury, which finds for the plaintiff, upon which proceedings the court enters a judgment. Accordingly Bishop v. Busse is upheld and denied in alternation.

See this case cited and discussed in Hughes' Equity. It can be cited to oppose Cumber v. Wane, Smith's leading cases; also one phase of Cutter v. Powell, Id. Leading cases, 311, 308, respectively, 3 Gr. and Rud.

Cases like Stilk, Cumber and Cutter are not made clear and impressed in Illinois. Even when they are cited, it is evident that the court saw but dimly. And generally this is true of the general principles, the familiar maxims and the leading cases.

Again, take this case: A husband gets a divorce in Chicago from his insane wife while she is a paroled patient of an insane asylum, and custodia legis, so to speak. But the court found the fact and wrote it in the decree that she was sane. Upon this state of fact a bill of review was filed to review the decree for fraud. To this case the husband appeared and moved the court to dismiss the bill for review for the reason that it was filed without leave of court. The arguments on this motion to dismiss took up the time of the court a whole day, after which the motion was properly denied. After this came up the effect of the findings of the court written in the decree that the wife while *custodia legis* as already stated was nevertheless sane. Over the verity of the record there was a furious struggle that took up more time of the court.

In neither of the cases above referred to would a well trained lawyer entertain argument and its consequent delay of the court's business.

Look where we will, in the State, or country, or the municipal court, or the Federal court house, the conditions are the same. The demand for judges who know and can apply fundamental law is one of the first requirements for reform. And such is the view expressed by speakers at meetings of the State Bar Association. The writer believes that what is there said is true, and that not one-twentieth is there told. If the Illinois lawyer will look and consider, he will see reasons for reform. See 72 Cent. L. J. 158 (letter of Roscoe Pound).

From 500 Illinois reports, statutes and local books, it can be picked that most excellent lawyers have presided. The reports from 1 to 67 Illinois are among the best. The decisions of Charles B. Lawrence, 1864-1874, will rank with those of Blackford in Indiana, Thurman of Ohio, Gibson of Pennsylvania or Shaw of Massachusetts. His decisions are found in volumes 36-67. It is due to refer to some decisions of this the "Golden Period" of Illinois, and, in the near future, I wish to refer to some of his decisions and the splendid services he rendered, not only his state but the whole country. He understood the fundamental principles of the law which gleam resplendently from his decisions.

W. H. HUGHES.

Chicago, Ill.

FRAUDULENT CONVEYANCES—SOLVENT DEBTOR.

MARTIN & PULSIFER v. McDANIEL.

Supreme Court of Alabama, Nov. 24, 1910.
53 So. 790.

Voluntary conveyances and gifts are void as to creditors of the grantor, without regard to his solvency or insolvency.

EVANS, J. This is the case of a creditors' bill, filed by J. H. McDaniel and G. E. McDaniel, doing business as McDaniel & Son, against J. W. Martin and F. E. Pulsifer, doing business as Martin & Pulsifer, and J. W. Martin and F. E. Pulsifer personally, and Clark H. Pulsifer, Grant Pulsifer, Guy Pulsifer, Jack Pulsifer, and Ardell Pulsifer, seeking to have a conveyance of real estate from F. E. Pulsifer to his four brothers and sister, above named, declared void as a fraud on said complainants as creditors and to have the property conveyed sold to meet judgments held by McDaniel & Son against the firm of Martin & Pulsifer and J. W. Martin and F. E. Pulsifer individually. Upon a hearing on the pleadings and proof, the judge of the lower court decreed the relief prayed for, and from this decree the respondents prosecute this appeal.

From the pleadings and proof it appears that in the fall of 1906 the respondents J. W. Martin and F. E. Pulsifer formed a partnership for the sale and installation of waterworks systems for country and suburban homes, and bought considerable machinery from the complainants, McDaniel & Son. Martin was the business head of the firm, managed the money affairs, and had charge of the general business. Pulsifer was the practical man and installed the machinery, being absent from home for long periods for that purpose. In the fall of 1907, McDaniel & Son began pressing Martin & Pulsifer, through Martin, the head and business manager of the firm, for a settlement of their account; and finally, on November 2, 1907, Martin executed in the name of the firm, and for the firm of Martin & Pulsifer, and delivered the same to McDaniel & Son, three promissory notes in full settlement of the account. These notes were for the following amounts, payable as follows: $324.85 due 1st of April, 1908; $519 due 1st of June, 1908; $519 due 1st of August, 1908. These notes were unpaid when due, except for small credits. McDaniel & Son sued thereon in the city court of Montgomery, and on the 5th of October, 1908, after the filing of their bill in this case, obtained judgment thereon against the firm of Martin & Pulsifer and J. W. Martin and F. E. Pulsifer individually, amounting to $1,487.47.

On the 23d day of April, 1908, respondent F. E. Pulsifer executed a deed conveying his one-sixth undivided interest in certain lands to his brothers and sister, the other respondents to the bill, for the consideration of $2,500 cash in hand paid. We conclude from the evidence that these brothers and sister knew that McDaniel & Son claimed that Martin and Pulsifer owed them in some amount at the time the $2,500 was paid and the deed executed and delivered, and that the consideration was in fact paid. There was an incumbrance on the land when this interest was sold, and F. E. Pulsifer paid back to his grantees $500 of the money to discharge the amount of the debt which his share that he had sold them was liable for as between the said Pulsifers. There is no evidence tending to show that the said F. E. Pulsifer was insolvent or in failing circumstances; nor is there any evidence tending to show that he was converting his property subject to execution and sale, into cash, so as to put it out of the reach of creditors. The burden of proving these matters, if true, was upon complainants; and, they having failed to make any attempt to adduce such proof, we must conclude, for the purposes of this decision, that F. E. Pulsifer was entirely solvent and had ample property easily subject to execution and sale to satisfy all his debts in the event F. E. Pulsifer were found liable therefor, and that his sale of this particular property did not in any way hinder, delay, or defraud the complainants.

It is true that in this transaction the burden is upon the respondents to show that a bona fide valuable consideration was paid; but, when this duty was performed, the burden of showing that the sale was made by F. E. Pulsifer with intent to hinder, delay, or defraud his creditors, and that this intent was participated in by the grantees, rested upon the complainants; and they have failed to carry this burden. The presumption is, therefore, that it is not true. In this state voluntary conveyances and gifts are declared by law to be void as to the creditors of the grantor or giver, without regard to the solvency or insolvency of the grantor or giver. But this state has never applied the same rule in the case of conveyances upon a bona fide valuable consideration. When such a consideration is shown, then the burden is upon the complainant creditor to show affirmatively that the intent of the grantor, or effect of the conveyance, was to hinder, delay, or defraud his

creditors, and that the grantee or grantees knew of such intent or effect, or was in possession of the knowledge of facts, which would put a reasonably prudent person upon inquiry, which, when followed up, would lead to the knowledge of such intent or effect.

In the case sub judice there is no proof that F. E. Pulsifer was insolvent or in failing circumstances at the time the deed in question was executed; nor was there any proof that he was converting his property subject to execution into money, so that he might get it out of the reach of creditors. After the respondents had shown a bona fide valuable consideration for the conveyance, the burden of showing that, notwithstanding that fact, it was made to hinder, delay, or defraud his creditors, was cast upon complainants; and this burden the complainants have failed to carry.

As tending to show fraud the complainants insist that the erasures of certain figures in the bond for title, and the substitution of others, show that the transaction was not bona fide. It is the contention of appellees here, complainants below, that the bond for title was made and dated in the year 1908; and, in order to make the original land trade antedate the debt, the respondents, or some one for them, scratched out the "8" and substituted a "7." All of the witnesses, cognizant of the facts, swear that such was not the case. They say that the original date was 1906; and we can see, after careful examination with a microscope, no evidence upon the paper itself what the original number was that was scratched out. The erasure seems to have been complete. The respondents contend that in 1906—in the fall of that year—respondents went to their lawyer to get their contract with reference to this land in writing, and that he then wrote out a skeleton, so to speak, of a bond for title, and dated it, as to the year, 1906; that, upon finding that he would have to make investigation of the records in the probate office to get a proper description of the lands their lawyer informed them that he would charge $10 for the work; that respondents then decided not to incur this expense and departed; that on April 11, 1907, they returned to their lawyer and decided to execute the bond for title; that the said lawyer was sick at the time, and got his son to copy the skeleton bond for title that had formerly been drawn, and fill in the description of the lands, etc.; that the son, in copying, copied the "1906" as in the original, and that before the execution of the paper the "6" was erased (evidently, from the appearance of the paper, with a knife or some other sharp instrument) and a "7" put in its place. The paper, from its appearance, was drawn up by some person not much accustomed to writing, and one who would likely have copied anything that was in the original. The whole body of the paper sustains this theory. The date of the paper, as it now is, is April 11, 1907. The figures "11" and "7" were apparently made at the same time with the same pen and ink. There was no erasure made where the "11" was placed.

We find, also, that in the condition of the bond it is stated that the note given for the purchase money was due and payable on the 1st day of January, 1908, and provides that, if the said purchasers (naming them) shall pay said note when the same becomes due, then, etc. From all appearances, this date for the payment of the note was written when the bond for title was written, with the same ink and pen. So, if the contention of the appellees is true, then the note fell due, for the payment of the purchase money, several months before the bond for title was executed; and yet the condition expressed was that "if the said Grant Pulsifer, Guy Pulsifer, Clark H. Pulsifer, Ardell Pulsifer, and Jack Pulsifer well and truly pay the said note when the same becomes due, and if said Frank E. Pulsifer makes and delivers to them a fee-simple title to the above described land, then this bond shall be null and void; otherwise, to remain in full force and effect." This shows that the note for the purchase was to fall due at a time subsequent to the execution of the bond. We conclude, therefore, that the erasure and substitution were made as contended by appellants, there being no evidence to the contrary.

The appellees contend, further, that the bond for title was not properly admissible in evidence under the pleadings in the case, as there was no allegation that there was any bond for title. Under our view of the case, it is immaterial whether the bond for title is admitted or not. The evidence shows that, at the time of the execution of the deed, the grantor received, as a consideration therefor, the sum of $2,500 in cash. This being true, and no fraud, hindrance, or delay having been shown by appellees, the conveyance must be upheld. It is true the bill alleges, and the proof shows, that complainants had obtained judgment against respondent F. E. Pulsifer; but the bill does not allege, nor does the proof show, that any attempt by execution has ever been made to collect this judgment. No proof of the insolvency of F. E. Pulsifer having been made, or that he was in failing circumstances, or that he converted his property subject to execution into money, so that the judgment could not be collected by execution, the de-

cree of the lower court must be reversed, and a decree here rendered dismissing the complainants' bill without prejudice, which is accordingly done.

Reversed and rendered.

DOWDELL, C. J., and ANDERSON and SAYRE, JJ., concur.

NOTE.—*Effect of Voluntary Conveyances by Solvent Debtors as Against Existing Creditors.*—This question affords a striking example of the irreconcilable conflict between the decisions of the manifold jurisdictions in our land. While it is the settled doctrine of Alabama and other states that a voluntary conveyance is void as against existing creditors of the grantor, irrespective of the solvency or insolvency of the latter, the courts of California on the contrary, applying the statutory law in point, hold that, whether the grantor be solvent or insolvent, his voluntary conveyance is valid even as against existing creditors, unless actual fraud be established. Indiana applies a rule slightly different from that of California, and, construing the same statutory provision, seems to hold that the voluntary conveyance of an insolvent is void as against existing creditors, his insolvency being sufficient evidence of the intent to defraud. Still another doctrine obtains in Missouri, namely that the voluntary conveyance of a debtor is not per se void, but that the presumption of fraud arising from the want of consideration can be rebutted and proof of solvency at the time is sufficient to rebut the presumption. Extracts from opinions in point follow.

The rule stated in the Alabama decision *supra* —which was at one time sustained by the weight of authority—has been declared by statute in Kentucky, as appears from the opinion in Atkins v. Globe Bank & Trust Co., 124 S. W. 879 (Ky. App. 1910); "Section 1907 of the Kentucky Statutes (Russell's St., Sec. 2100), reads in part: 'Every gift, conveyance, assignment, transfer or charge, made by a debtor, of or upon any of his estate without valuable consideration therefor, shall be void as to all his then existing liabilities.' Under this statute every voluntary conveyance made by a person who is at the time liable for any debts is constructively fraudulent as to such obligations, no matter whether they are fixed or contingent or have been incurred as principal, or surety or indorser or guarantor . . . . The fact that he may at the time own or retain largely more than he gives will not be allowed to defeat the operation of the statute. If what he has given away is needed to pay his debts, the property in the hands of the grantees can be subjected for this purpose."

The same is true of West Virginia. In McCaskey v. Potts, 65 W. Va. 641, 64 S. E. 908, (1909), the court declared: " . . . . This court, construing Secs. 3099 and 3100, Code 1906, has held in numerous cases, that a voluntary gift or transfer of property, which means a gift, sale, or transfer, upon consideration not deemed valuable in law, is void as against existing creditors, because voluntary and not because it is fraudulent, regardless of the 'amount of the debts, the extent of the property so conveyed, the motives which prompted the settlement, or the conditions or circumstances of the party at the time.'"

The Indiana Statutes provide (Burn's Annotated Indiana Stat. 1908, Sec. 7483): "The question of fraudulent intent, in all cases arising under the provisions of this act, shall be deemed a question of fact; nor shall any conveyance or charge be adjudged fraudulent as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration." Accordingly it had been held that "in this state there is no such thing as constructive fraud; by statute the question of fraud is made a question of fact." Still it was held that a voluntary conveyance which left the grantor without sufficient means to satisfy his existing debts, was a fraud on his existing creditors and void, fraudulent intent being inferred as a fact from the effect of the conveyance in rendering the grantor insolvent. Personette v. Cronkhite, et al., 140 Ind. 586, 40 N. E. 59 (1894).

On the other hand, in Bull v. Bray, 89 Cal. 286, 26 Pac. 873, 13 L. R. A. 576 (1891), the Supreme Court of California by an unanimous decision construing the same statutory provision as in Indiana (*supra*), held that where the lower courts had "found the fact that the conveyances were voluntary conveyances, that the defendant . . . was insolvent at the time he made the conveyances, and that these conveyances delayed and defrauded the plaintiff in the collection of his debt," it was still necessary for the lower court to find the further fact that the intent of the grantor in making the conveyances was to delay and defraud his creditors, and that in order to infer such intent as a fact from the facts already proved it is neecssary that the latter absolutely exclude all possibility of the absence of fraudulent intent in the mind of the grantor. The reason assigned was that the statute pronounced the question of intent to be one of fact and not of law. "If the legislature had intended a gift by an insolvent to constitute a constructive fraud or fraud in law, it was easy to have said so. Instead of that they expressly legislated away all the reasons upon which the decisions so holding profess to stand." This doctrine would seem to clear the way for fraud.

The rule obtaining in Missouri appears to strike nearest the golden mean. In Fehlig v. Busch, 165 Mo. 144, 65 S. W. 542 (1901), the evidence showed a voluntary conveyance by a grantor who was at the time fully solvent, but subsequently became insolvent. Plaintiff was a creditor of the grantor at the time of the conveyance. The court, per Marshall, J., stated the law as follows: "If Busch was not insolvent and this conveyance did not render him so, then it is wholly immaterial whether he conveyed this property for a valuable consideration or gave it away, for it is not denied that the conveyance was made in good faith and was not fraudulent in fact. 'The presumption of an intent to delay, hinder and defraud creditors arising from a voluntary conveyance by a person who is in debt is not conclusive, for such a conveyance is fraudulent only when it necessarily delays, hinders or defrauds them. . . . The true rule by which the fraudulency or fairness of a voluntary conveyance is to be ascertained in this respect is founded on a comparative indebtedness, or in other words, on the

pecuniary ability of the donor at the time to withdraw the amount of the donation from his estate without the least hazard to his creditors, or in any material degree lessening their then prospects of payment.' (Bump on Fraud. Conv., 4 Ed., pp. 285 and 286). This rule received express sanction by this court in Walsh v. Kitchum, 84 Mo. l. c. 430, and it was there held that the presumption of fraud might be explained and rebutted, following in this respect the rule laid down by the Supreme Court of the United States in Lloyd v. Fulton, 91 U. S. 479, and the earlier cases in this state."

Absent actual fraud, it would seem on principle that a debtor, solvent when making a voluntary conveyance and not rendered insolvent thereby, violates no contractual right of his creditor, and is therefore guilty of no breach of faith, actual or constructive. The creditor, having required no other security, must be taken to have relied solely upon the debtor's promise to pay when due and the exercise of good faith on his part to the end that he would be able to redeem his promise at maturity. Now the conveyance under the circumstances stated is clearly no breach of good faith on the debtor's part because it does not endanger his ultimate ability to pay. Hence no right of the creditor is violated. As between creditor and donee, therefore, the donee has the superior, because in fact the only, right and title, and the gift ought to be sustained. A. E. GANAHL.

CORAM NON JUDICE.

CORPORATE LIABILITY FOR CRIME.

We regret to note that our esteemed contemporary, the Central Law Journal, is disposed to lend the weight of its name to the contention that corporations, whose officers and directors have perpetrated crimes in its interest, and of which crimes it has received the proceeds, should not be punished for those crimes, by the imposition of the fines and penalties which a private individual who might engage in them, would be subject to. The occasion of this argument is found in a news item circulated by the Associated Press, and emanating, it would seem, from the offices of the American Sugar Refining Company, setting up that the government has encountered a legal problem of great difficulty in its prosecution of the American Sugar Refining Company—this problem consisting in the fact that "all of the officials who made of this corporation an alleged criminal being dead, or displaced, and the present management being law-abiding to punish the corporation would be to punish its shareholders." And the pitiable consequences of punishing the shareholders is emphasized by the statement that the shareholders "are generally trustees, executors, administrators, guardians of orphans" and all manner of religious and charitable institutions, to say nothing of nearly 10,000 women who purchase stock as an investment.

There is no blinking the fact that a fine imposed on a corporation must be paid by the shareholders. It is true that the shareholders may have been without guilty knowledge of the transactions leading to the imposition of the fines, such as the famous "Seventeen Hole" swindle of the sugar trust. It is, however, the duty of stockholders to see that their agents, in the discharge of their duties as such, do not violate the law, and to select agents who will not violate the law. It would be a singular situation if the revenue laws of the United States, for instance, should exempt from their operations corporations which engage in defrauding the government of its legal revenues. Expediency, of course, is no certain guide as a rule, for the legislature, but it is hardly necessary to point out that, in these days of vast corporate activities—probably nine-tenths of the important business of the country being transacted by corporations—to exempt such bodies from the penalties imposed on individuals, for defrauding the revenues, would result, practically, in the nullification of those laws, since the individual agents used by the corporation in effecting its frauds could easily disappear at the first sign of trouble, or, if apprehended and convicted, might prove unable to pay the fines imposed on them.

Such consequences, of course, would not justify the imposition on corporations of the same penalties as the law imposed on individual offenders, if to do so would result in the infliction of an unfair burden on the stockholders. But that we can not concede. The stockholders choose their own officers, and if they see fit to choose officers who are willing to commit crimes for the benefit of the corporation they should be subject to the same money penalty. No one is obliged to invest in corporate stocks, and if he does he should take notice that the value of his stock is apt to be impaired by the payment of fines, if the corporation employs unworthy agents to manage it.—The National Corporation Register.

[NOTE. Our valued contemporary does not state altogether fairly the position of the present editor of this journal. We urged as strongly as we knew how in 71 Cent. L. J. 437 and 421, that corporate officials should be punished with the same certainty as any other malefactors and that they should not be allowed to put forward the machine they ran as a screen for criminality. We thought this tended to immorality as well as injustice, to say nothing about cold calculation by sleek directors to reap profits from crime. We further urged that striped garbs used for inmates of a penitentiary were the only things for these respectable criminals. Further, we thought the corporation should be proceeded against for restitution, but not for that multiplied a hundred or thousand times, of money malefactors had covered into and were holding in its treasury, or had distributed in dividends.—Editor.]

LIBERAL CONSTRUCTION OF MARRIED WOMEN'S ACTS.

Editor Central Law Journal:

In the face of the words used in section 1155, of the Code of the District of Columbia saying: "Married women shall have power to sue separately for the recovery, security or protection of their property and for torts committed against them, as fully and freely as if they were unmarried." The Supreme Court of the United States held, by a majority of the court, that, under this section, a married woman cannot sue her husband for assault and battery upon her person by him. Justices Har-

lan, Holmes and Hughes dissented. Thompson v. Thompson, 31 Sup. Ct. Rep. 111.

Justice Day, delivering the opinion of the court said: "By this District of Columbia statute, the common law was changed, and, in view of the additional rights conferred upon married women in section 1155, and other sections of the code, she is given the right to sue separately for redress of wrongs concerning the same. That this was the purpose of the statute, when attention is given to the very question under consideration, is apparent from the consideration of its terms. Married women are authorized to sue separately for 'the recovery, security or protection of their property, and for torts committed against them, as fully and freely as if they were unmarried.' That is, the limitation upon her right of action imposed in the requirement of the common law that the husband should join her was removed by the statute, and she was permitted to recover separately for such torts, as freely as if she were still unmarried. The statute was not intended to give a right of action as against the husband, but to allow the wife, in her own name, to maintain actions of tort, which at common law, must be brought in the joint names of herself and husband. This construction we think is obvious from a reading of the statute in the light of the purpose sought to be accomplished. It gives a reasonable effect to the terms used, and accomplishes, as we believe, the legislative intent, which is the primary object of all construction of statutes."

Justice Harlan, in his dissenting opinion says: "In my opinion the statutory provisions properly construed, embrace such a case as the present one. I cannot believe that congress intended to permit the wife to sue the husband separately in tort for the recovery, including damages for the detention of her property, and at the same time deny her the right to sue him separately for tort committed against her person."

Two features of the above decision call for comment. First the apparent decision by the Supreme Court that it is the object of the court to find out what the lawgiving power intended to express, and not to construe the meaning of its expressed will. Where the lawgiving power, as with us, is composed of hundreds of individuals, divided into two separate assemblies, how is it possible to find what were the motives of the legislator in enacting a certain law, except from the very words used by it? In the case of an act passed by congress, if a poll could be taken of every member who voted for it, both in the House and in the Senate, it would undoubtedly be found that, while they all agreed as to the result, they had been moved by many different motives, often irreconcilable among themselves. In the days of absolute governments on the continent of Europe, it was the custom of the kings, when they published their decrees, to accompany them with their "motives." The legislative will then, being one and indivisible, these motives were naturally of great importance in construing the meaning of the decrees. Wherever constitutional government has superseded absolutism, the publishing of the "motives" with the laws has naturally and necessarily been discontinued, and it has universally been accepted as the only true rule of construction of legislative enactments, to look to the expressed will only, and to declare that to be law which the legislative power has said in unmistakable language. Only where the language used is equivocal, and allows of two or more constructions, equally conforming to grammar, syntax and logic, is it permissible to resort to secondary means of construction, such as reports by commissions appointed to prepare the law, debates in congress, reports of committees and the like.

In the decision before us, however, the supreme court seems to consider it its business to apply as law, not what congress said, but what it, in the opinion of the court, intended to say. And as to this supposed intention, the court reaches a conclusion, in support of which there does not appear to be one single word said in the sections of the statute cited.

The other peculiarity of this decision is its apparent tendency to elevate rights of property above the rights of person. It is true that the majority of the court do not directly say, that if the action against the husband and by the wife had been to protect her separate property, it would not have been dismissed, but it indicates that this is a different question under the statute, and might be differently decided. Justice Harlan, in his dissenting opinion shows, to our mind conclusively, that under the statute there can be no doubt of the wife's right to bring such action against the husband where property is involved, and he and the justices dissenting with him, hold that if such action for the protection of property is permissible, surely it must be equally permissible where the wife's person is concerned. But the fact seems significant that it is easier for the legal mind, as exemplified upon the bench of the Supreme Court of the United States, to accommodate itself to an absolute protection of the wife's property, than to an equal protection of her person.

AXEL TEISEN.

Philadelphia, Pa.

[NOTE.—The communication of our correspondent shows an opposite view to that taken by us in 72 Cent. L. J. 75. This conflict should not to be wondered at, however, even if Justice Harlan stood alone in his dissent from the majority. We find him supported also by Justices Holmes and Hughes. We hardly agree with our correspondent in what he says about "motives" as an aid in construction of statutes being displaced "wherever constitutional government has superseded absolutism." We must consider the exigency, the policy, the surrounding circumstances as fully now as ever before and even more, just because there is no legislator who may state his "motives" in respect to legislation he assisted in enacting. It is simply more difficult to learn the "motives," but they are indisputably presumed to be responsive to exigency and policy and to be interpreted in the light of surrounding circumstances.—Editor.]

HUMOR OF THE LAW.

"Rufus, you old loafer, do you think it's right to leave your wife at the washtub while you pass your time fishing?"

"Yessah, jedge; it's all right. Mah wife don' need any watching. She'll sholy wuk jes' as hard as if I was dah."—Boston Transcript.

Client—"Can a man's character be judged from his handwriting?"

Lawyer—"Yes, if his letters are read in court!"—London Opinion.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Acknowledgement**—Nature of Act.—The taking and certification of an acknowledgment is a judicial act.—Byrd v. Bailey, Ala., 53. So. 773.

2. **Bankruptcy**—Contempt Proceedings.—The action of a District Court in dismissing a contempt proceeding against a bankrupt based on a certificate from the trustee on the refusal of counsel for the trustee to file a written charge and his statement that he was unable to furnish evidence held not error.—McNeil v. McCormack, C. C. A., 182, Fed. 808.

3.——Discharge.—Defendant, pleading a discharge in bankruptcy, need not aver that plaintiff's debt was scheduled, for that is a matter for special replication to the plea setting up the discharge.—B. F. Roden Grocery Co. v. Lessley, Ala., 53 So. 815.

4.——Discharge.—Where false statements were made by bankrupts to secure credit under such circumstances as to preclude any doubt that they were willfully and knowingly made, they were not entitled to a discharge.—In re Taff & Conyers, D. C., 182 Fed. 899.

5.——Exemptions.—Where a bankrupt was entitled to exemptions out of the sale of his interest in real property, the referee was only entitled to distribute the balance remaining after allowing the bankrupt his exemptions in full.—In re Yeager, D. C., 182 Fed. 951.

6.——Exemption from Arrest.—An adjudication of bankruptcy after a debtor's arrest on civil process entitles him to his discharge.—Turgeon v. Emery, D. C., 182 Fed. 1016.

7.——Jurisdiction.—A decree of a state court foreclosing a chattel mortgage on property of alleged bankrupts, which by permission of the mortgagors directed the sale of property not covered by the terms of the mortgage, held to create a lien as to such property, which would be avoided by an adjudication, and the court of bankruptcy held to have jurisdiction to enjoin a sale under such decree.—In re Oxley, D. C., 182 Fed. 1019.

8.——Jurisdiction.—The holder of an assignment of money due a bankrupt from a third person at the date of the bankruptcy is an adverse claimant, and the bankruptcy court is without jurisdiction by a summary proceeding to require him, over his objection, to submit his claim to the money to such court for decision.—Copeland v. Martin, C. C. A., 182 Fed. 805.

9.——Order to Surrender Property.—An order requiring a bankrupt to turn over property to his trustee, based in part on depositions taken without notice to him and without giving him an opportunity to appear and cross-examine the witnesses, is violative of his fundamental rights.—In re Frank, C. C. A., 182 Fed. 794.

10.——Petition to Review Order of Referee.—Where a party desiring a review by the judge of an order made by a referee in bankruptcy inadvertently files his petition with the clerk instead of with the referee, it is within the discretion of the court in the absence of any rule on the subject to permit the mistake to be corrected even though the ten days within which it is its practice to require such petitions to be filed has elapsed.—In re Nippon Trading Co., D. C., 182 Fed. 959.

11. **Banks and Banking**—References.—A fraudulent receipt of deposits by a bank or the fraudulent acquisition of property by it held not to give the depositor or seller a lien on the entire estate or entitle him to a preference.—Stilson v. First State Bank of Corwich, Iowa, 129 N. W. 70.

12.——When property of a bankrupt estate is traced to the possession of one who received it on the eve of the bankruptcy, it is presumed that it remains in his possession or under his control, and the burden rests on him to satisfactorily account for it to the court of bankruptcy; he cannot escape an order for its return by simply denying under oath that he has it or that it is the property of the estate.—In re Meier, C. C. A., 182 Fed. 799.

13.——Property Passing to Trustee.—A policy of insurance on the life of a bankrupt, by which she was authorized to change the beneficiary at will, and also to assign the policy, which she had not done, was property which she might have transferred prior to the filing of the petition, and which passed to her trustee.—In re Dolan, D. C., 182 Fed. 949.

14.——Probable Debts.—The interest of a testator in a partnership which he provided by his will might remain in the business for a certain term as a loan, and which was so treated on the books of the new firm by his surviving partners, who paid interest thereon until their bankruptcy, held not to have remained as capital at the risk of the business, but to have become a debt probable against the estates in bankruptcy.—In re Lough, C. C. A., 182 Fed. 961.

15.——Trustee.—The judge of a bankruptcy court may disapprove a trustee's selection by a majority of the creditors, where it appears that such selection would operate to permit the bankrupt and his relatives interested as creditors to administer the estate.—In re Sitting, D. C., 182 Fed. 917.

16.——Trustee in Bankruptcy.—An attachment execution held not maintainable against a bankrupt's trustee over his objection.—In re Kranich, D. C., 182 Fed. 849.

17.——Withheld Property.—To sustain a referee's order requiring a bankrupt to surrender alleged withheld property, it must appear that the title is in the trustee, and that the possession is in the bankrupt or a bailee for him.—In re Nisenson, D. C., 182 Fed. 912.

18.——Acceptance of Draft.—An acceptor of a draft held not estopped from relying on the defense of fraud inducing the acceptance.—Stouffer v. Alford, Md., 78 Atl. 387.

19.——Double Liability of Stockholders.—Laws Colo. 1885, p. 264, imposes a double liability upon stockholders in a state bank, but prescribes no special remedy for enforcement thereof. Held that creditors of such bank could not sue in behalf of themselves and other creditors in an action at law in Maine to enforce such liability.—Miller v. Spaulding, Me., 78 Atl. 358.

20.——Liability of Endorser.—Where payment of a note payable on demand was not demanded for 27 months, a declaration against an indorser alleging such facts was not demurrable for failure to allege facts excusing the delay.—National Bank of Delaware at Wilmington v. Lindsay, Del., 78 Atl. 407.

21. **Bills and Notes**—Bona Fide Purchaser.—To render a purchaser of a note before maturity a purchaser in good faith, he need not make inquiries as to the purpose for which the note was given, or as to possible defenses.—American Nat. Bank v. Lundy, N. D., 129 N. W. 99.

22.——Time of Accrual of Right.—Where a series of notes is secured by mortgage, authorizing the mortgagee, on default in payment of one of the notes, to declare all due, held, one to whom the mortgagee indorsed part of the notes could not exercise the option, so as to advance the time when he could sue such ndorser on his indorsement.—Hugh Getty, Inc., v. Cauchois, 126 N. Y. Supp. 202.

23. **Bonds**—Action On.—An action on a bond given to insure the transmission by a banker to foreign countries of moneys deposited with him, may not be maintained by a single creditor, though there be no proof of the existence of other creditors.—Lordi v. People's Surety Co. of New York, 126 N. Y. Supp. 180.

24. **Brokers**—Accepting Payment from Others.—Where real estate is placed for sale with an agent, although the terms of sale are fixed by the owner, it is incompatible with the agent's duties to accept payment as the agent of the purchaser.—Steinmueller v. Williams, Minn., 129 N. W. 145.

25.——Right to Commission.—Where a broker, pretending to have a purchaser for land, purchased it himself, held, that the relation of principal and agent ceased, and that of vendor and purchaser arose, and the broker was not entitled to a commission, in the absence of a special agreement after the change of relation.—Christianson v. Mille Lacs Land & Loan Co., Minn., 129 N. W. 150.

26. **Carriers**—Bill of Lading.—Where a shipper for three years had been receiving bills of lading in the same terms as one in question, his knowledge of its terms, in the absence of fraud, must be conclusively presumed.—Hix v. Eastern S. S. Co., Me., 78 Atl. 379.

27.——Duty to Provide Suitable Cars. — A carrier must provide suitable cars, and cannot avoid liability for not doing so by using another's cars; but, if the consignor undertakes to furnish the cars, the carrier is not liable for a loss from their defective condition.—Central of Georgia Ry. Co. v. Chicago Varnish Co., Ala., 53 So. 832.

28.——Freight Rates.—No contract or mistake in naming wrong rate can affect right to collect proper interstate commerce rate for shipment.—Louisiana Ry. & Navigation Co. v. Holly, La., 53 So. 882.

29.——Railroad Commission.—Rulings of members of the Railroad Commission are accepted by the court as correct, until shown to be incorrect on appeal.—Morgan's L. & T. R. & S. S. Co. v. Railroad Commission of Louisiana, La., 53 So. 890.

30.——Twenty-eight Hour Law.—It is no defense in a proceeding for confining animals in transit more than 28 hours without unloading them, that another carrier participating in the transportation has paid a penalty for violation of the statute.—United States v. Wabash R. Co., C. C. A., 182 Fed. 802.

31.——Who Are Passengers.—Passengers held entitled to walk out of the car onto the station platform, or from one car to another while the train is stopping at a station, without losing their rights as passengers.—Central of Georgia Ry. Co v. Storrs, Ala., 53 So. 746.

32. **Chattel Mortgages**—Animals.—A chattel mortgagee's rights under the instrument will not be prejudiced by natural changes of color of animals described therein.—Stickney v. Dunaway & Lambert, Ala., 53 So. 770.

33.——Recording.—A record of a chattel mortgage held not sufficient to give constructive notice to a subsequent purchaser that the mortgage was executed by the owner of such property.—First Nat. Bank of Opp v. Hacoda Mercantile Co., Ala., 53 So. 802.

34. **Clerks of Courts**—Action on Bond.—In an action on the bond of a clerk of a court to recover damages because of his refusal to enter a judgment and issue execution thereon, the burden rests on plaintiff to prove damage by showing that he could have collected on such execution if issued.—Kinney v. United States Fidelity & Guaranty Co., C. C., 182 Fed. 1005.

35. **Conspiracy**—Criminal Liability.—Even if conspiracy to commit larceny was merged into the larceny, so as to prevent a conviction for conspiracy, the doctrine would not apply to prevent a conviction for conspiracy, where the larceny was committed in another state.—State v. Effler, Del., 78 Atl. 411.

36. **Constitutional Law**—Party Entitled to Raise Question.—An initial carrier in an action against it based on Interstate Commerce Act, held not entitled to question the validity of the provision authorizing it to recover from the connecting carrier causing the loss.—Central of Georgia Ry. Co. v. Sims, Ala., 53 So. 826.

37. **Contracts**—Action for Commissions. — A broker suing on and solely relying on a special contract for his commission cannot recover upon a quantum meruit.—Clark v. Davies, Neb., 129 N. W. 165.

38.——Building Contracts.—A building contractor held entitled to sue for the work done, where the estimate given contained such error of judgment as amounted to a fraud of his rights.—McDonald v. MacArthur Bros. Co., N. C., 69 S. E. 832.

39.——Duress.—A contract procured by duress is voidable only by the party on whom the duress has been exercised.—George Colon & Co. v. East 189th St. Bldg. & Const. Co., 126 N. Y. Supp 226.

40.——Performance.—Where determination of the question of the performance of a contract is left to a third person, his decision, within the scope of his authority, in the absence of fraud or gross mistake, is conclusive.—United States v. Hurley, C. C. A., 182 Fed. 776.

41.——Public Policy.—An agreement by a public officer to give another the emoluments of the office is void, as against public policy.—Bailey v. Sibley Quarry Co., Mich., 129 N. W. 17.

42.——Validity.—Where a written instrument expresses the intention which the parties had at the time, no relief will be granted on the assumption that their intention would have been different if they had not been mistaken as to the legal effect of the instrument.—McGraw v. Muma, Mich., 129 N. W. 20.

43.——What Constitutes.—So long as in contemplation of both parties something remains to be done to establish contract relations held, a contract is not made.—Central Bitulithic Paving Co. v. Village of Highland Park, Mich., 129 N. W. 46.

44. **Corporations**—Dissolution.—Where, by expiration of the charter of defendant corporation pending suit, its existence was terminated, there could be no party defendant in error to a bill of exceptions filed by plaintiff, and the writ must be dismissed.—Venable Bros. v. Southern Granite Co., Ga., 69 S. E. 822.

45.——Effect of Dissolution.—The statutes of a state cannot give its courts jurisdiction of actions in personam against a foreign corporation after it has been dissolved.—Robinson v. Mutual Reserve Life Ins. Co., C. C., 182 Fed. 850.

46.——Insolvency.—A surety, on a corporation's supersedeas bond on appeal having been compelled to pay the judgment after affirmance, held not entitled to payment out of the corporation's assets in insolvency in preference to the mortgage bondholders thereof.—Gay v. Hudson River Electric Power Co., C. C., 182 Fed. 904.

47.——Subscription to Stock.—The president of a corporation has authority to receive payment of subscriptions for its stock, even though the corporation is a trust company which cannot transact business until all its capital stock is paid in.—Higginbotham v. International Trust Co., 126 N. Y. Supp. 366.

48. **Courts**—Jurisdiction.—In transitory actions a nonresident may be sued at common law, independent of statute, in any jurisdiction where he may be found.—McDonald v. MacArthur Bros. Co., N. C., 69 S. E. 832

49. **Covenants**—Acton for Breach.—One covenanting in a deed to defend the title thereby conveyed to him held liable, in an action for breach of his covenant, for reasonable costs and counsel fees expended by his grantee in doing so.—Jones v. Balsley, N. C., 69 S. E. 827.

50.——Joint or Severable Liabilty.—Where two persons sold land jointly, their warranty obligation is joint and not in soldo.—Suthon v. Viguerie, La., 53 So. 855.

51. **Criminal Law**—Perjury.—Where a statute makes perjury a felony, without defining what constitutes perjury, it must be defined as it was known at common law.—State v. Rash, Del., 78 Atl. 405.

52. **Damages**—Duty to Mitigate.—Where a train failed to stop at a flag station on signal, leaving intending passenger exposed to cold on a winter night, held, that the passenger was required to use ordinary care to lessen resulting damages.—Central of Georgia Ry. Co. v. White, Ga., 69 S. E. 818.

53. **Dedication**—Recitals in Deeds.—The fact that a deed called for an old street as one of the boundaries of the land conveyed held not to operate as a rededication of such street by the grantor, he having theretofore by his conduct dedicated a new way to be substituted therefor.—Moore v. Meroney, N. C., 69 S. E. 838.

54. **Deeds**—Presumptions.—Where a deed is for the benefit of the grantee, and imposes no burdens or duties on him, an acceptance is presumed.—Gulf Red Cedar Co. v. Cranshaw, Ala., 53 So. 812.

55. **Disorderly House**—Evidence.—Under a statute making it an offense to keep a house reputed to be a house of ill fame, the accused may show that the bad reputation is unfounded. —State v. Brown, Conn., 78 Atl. 430.

56. **Divorce**—Alimony.—Alimony pending appeal should not be granted a wife appealing from the judgment, unless it appears that the appeal will be successful.—Berger v. Berger, 126 N. Y. Supp. 284.

57. **Election of Remedies**—Acts Constituting Election.—A person is not estopped from pursuing a remedy that he is entitled to because he has endeavored to avail himself of a remedy that he never was entitled to.—Brown v. Fletcher, C. C. A., 182 Fed. 963.

58.——Necessity of Election.—To defeat an action because of the institution of another suit, there must have been two or more concurrent and inconsistent remedies between which the parties had the right to elect.—Courtney v. Courtney, Iowa, 129 N. W. 52.

59. **Embezzlement**—Intent.—It is essential to the offense of embezzlement by a bailee that the money was converted with intent to defraud the owner.—State v. Brewington, Del., 78 Atl. 402.

60. **Evidence**—Latent Ambiguity.—A deed made to a firm in the firm name, instead of to the individual members, is not void, but embraces a latent ambiguity which may be explained by parol testimony.—Cawthon v. Stearns Culver Lumber Co., Fla., 53 So. 738.

61.——Parol Evidence.—As between the original parties to a written agreement, parol evidence is admissible to show want or failure of consideraton.—Nightingale v. J. H. & C. K. Eagle, 126 N. Y. Supp. 339.

62. **Executors and Administrators**—Validity of Sale.—Executors and administrators, having an interest in the property of the estate sold, may purchase it, if the sale is fair, and the property is offered for sale in the ordinary manner and under such circumstances as will obtain the best price.—Bank of Wetumpka v. Walkley, Ala., 53 So. 830.

63. **Exceptions, Bill of**—Signature of Judge.—It is not essential to a bill of exceptions that the official designation of the trial judge should be used after his signature thereto.—Duckworth v. Steinacker, W. Va., 69 S. E. 850.

64. **Fire Insurance**—Insurable Interest.—The owner of one-half of a party wall has an insurable interest in his easement for the support of the other half.—Nelson v. Continental Ins. Co., C. C. A., 182 Fed. 783.

65.——Subrogation.—Failure of insurance companies to procure formal assignments of the rights of assured against a railroad company for negligently burning the insured property held not to deprive them of the right to obtain payment of a judgment against the railroad company secured by assured to them as their interest might appear in a suit of interpleader.—Cary v. Phoenix Ins Co., Conn., 78 Atl. 426.

66. **Frauds, Statute of**—Debts.—Defendant's contract to pay a debt due from plaintiff to a fertilizer company as a part of the consideration for defendant's purchase of plaintiff's fertilizer business held not within the statute of frauds.—Malone-Beall Mercantile Co. v. Greer, Ala., 53 So. 810.

67.——Interest in Real Estate.—As between partners held an interest in real estate existing through a partnership agreement in parol may be shown.—Hardin v. Hardin, S. D., 129 N. W. 108.

68.——Nature of Defense.—The statute of frauds is something more than a rule of evidence, being a substantial defense, upon which the complaint may be dismissed in a proper case.—Guinzburg v. Joseph, 126 N. Y. Supp. 324.

69.——Promise to Pay Debt of Another.—When one requested another to join him as surety upon a bond, and promises such other to save him harmless, the promise is an original agreement, and not within the statute of frauds.—Noyes v. Ostrom, Minn., 129 N. W. 142.

70. **Fraudulent Conveyances**—Transfer of Personalty to Pay Debts.—To make a transfer of personalty from a debtor to a creditor valid as against other creditors, there must be a valid indebtedness, and the property must be conveyed to secure the debt, and must be reduced to possession.—Youngs v. Wedderspoon, 126 N. Y. Supp. 375.

71.——Voluntary Conveyances. — Voluntary conveyances and gifts are void as to creditors of the grantor, without regard to his solvency or insolvency.—Martin & Pulsifer v. J. H. McDaniel & Son, Ala., 53 So. 790.

72. **Guardian and Ward**—Setting Aside Sale of Land.—To entitle a minor to set aside a voidable sale of his land purchased by his guardian, he must offer to restore whatever benefits he has received under the sale.—Bank of Wetumka v. Walkley, Ala., 53 So. 830.

73. **Habeas Corpus**—Invalid Ordinance.—One convicted and sentenced for violating an ordinance held property discharged on habeas corpus, where the ordinance could not lawfully be applied to his acts.—Cason v. Quinby, Fla., 53 So. 741.

74.——Validity.—Divorce in foreign state without personal service or appearance held valid in New York only when recovered in the state of defendant's domicile or the matrimonial domicile.—People v. Catlin, 126 N. Y. Supp. 350.

75. **Husband and Wife**—Authority as Agent.—In an action by a wife as owner of certain land against a telephone company for trimming trees along a highway, evidence to show the authority of plaintiff's husband to give permission to cut such trees was inadmissible, where defendant dealt with the husband as owner of the land, and not as his wife's agent.—Delaware & Atlantic Telegraph & Telephone Co. v. Jordan, Del., 78 Atl. 401.

76.——Expenditure by Wife for Necessaries.—A wife, obtaining necessaries through her own means and earnings, on being deserted by her husband, held entitled to recover therefor of him, under the doctrine of subrocation.—De Brauwere v. De Brauwere, 126 N. Y. Supp. 221.

77. **Improvements**—Preferences.—The right of a creditor of an insolvent to a preference is based on a right in the particular fund or property, and the manner of acquiring it is immaterial.—Stilson v. First State Bank of Corwich, Iowa, 129 N W. 70.

78. **Interstate Commerce**—Doing Business in State.—A contract made in Kentucky by a Kentucky corporation for the purchase of lumber to be sawed and delivered for shipment in Alabama relates to interstate commerce.—Parsons-Willis Lumber Co. v. Stuart, C. C. A., 182 Fed. 779.

79. **Intoxicating Liquors**—Civil Damage Action.—In an action by a wife against a saloonkeeper, the husband's intoxication may be deemed the proximate cause of an injury to the wife's means of support.—Duckworth v. Steinacker, W. Va., 63 S. E. 850.

80. **Judgment**—Merger and Bar.—The doctrine of merger of a cause of action in a judgment thereon is applied to final decrees in equity as well as to judgments at law, but the judgment or decree to operate as a merger must be valid.—Brown v. Fletcher, C. C. A., 182 Fed. 963.

81. **Landlord and Tenant**—Leases.—"Renew," as used in a lease, means to execute a new lease, and indicates that the lessee must give notice to the lessor of his election to renew.—Whalen v. Manley, W. Va., 69 S. E. 843.

82.——Liability for Repairs.—Unless the landlord has agreed to repair the demised premises, he is not liable to the tenant for failure to make such repairs.—Young v. Rohrbough, Neb., 129 N. W. 167.

83. **Libel and Slander**—Privileged Communications.—Libelous publications in reports of public officers, other than in judicial or legislative proceedings are only qualifiedly privileged.—Peterson v. Steenerson, Minn., 129 N. W. 147.

84.——Libel Per Se.—A letter written by defendant concerning plaintiff to the mayor of New York, and published, charging plaintiff with scoundrelism held libelous per se.—Bingham v. Gaynor, 126 N. Y. Supp. 353.

85.——Malice.—It is the duty of the publisher of an article which, if false, is libelous per se to know of its truth or falsity before publication, and malice may be inferred from the mere failure to discover the fact before publication.—Advertiser Co. v. Jones, Ala., 53 So. 759.

86.——What Constitutes.—In determining whether a publication is libelous, as charging criminal or disgraceful conduct, the test is whether the language used naturally conveys to the mind of an intelligent man a criminal or disgraceful charge.—Rossiter v. New York Press Co., 126 N. Y. Supp. 325.

87. **Life Insurance**—Construction of Policy.—The provision in a life policy making it void on failure of insured to pay any premium, or any note given for such premium, is intended for the benefit of the insurer, and it is optional with it to declare a forfeiture or not.—Union Central Life Ins. Co. v. Zihlman, W. Va., 69 S. E. 855.

88. **Marriage**—Fraud.—If a contract of marriage has not been consummated, the court should require no greater quantity of proof to sustain a finding of fraud or of mental incapacity in a suit to annul that contract than in any other cause.—Kutch v. Kutch, Neb., 129 N. W. 169.

89.——What Law Governs.—The law of the matrimonial domicile of the parties held to govern an action to annul the marriage, regardless of where the marriage was solemnized, though the lex loci contractus governs as to the validity of a marriage, unless it is odious by the common consent of nations.—Earle v. Earle, 126 N. Y. Supp. 317.

90. **Master and Servant**—Defective Appliances.—In an action for injuries to a servant caused by defective appliances furnished him, it is competent to show the kind of appliances in general use by like concerns for similar purposes, but not to show a particular kind used by one concern.—Heiser v. Cincinnati Abattoir Co., 126 N. Y. Supp. 265.

91.——Duty to Guard Machinery.—The degree of diligence required of the owner of dangerous machinery, in guarding it as directed by statute, is greater than is ordinarily required of a master to see that appliances furnished by him are free from defects.—Brown v. Douglas Lumber Co., Minn., 129 N. W. 161.

92.——Injury to Servant.—Where a servant is injured by alleged unsafe machines or instrumentalities provided by the master, he must allege knowledge of the danger or its equivalent on the part of the master.—Worden v. Gore-Meehan Co., Conn., 78 Atl. 422.

93.——Injury to Servant.—That a boy under 14 years of age, employed in a coal mine, misrepresented his age, does not preclude him from suing for damages caused by violation of Code Supp. 1909, sec. 412, prohibiting the employment of boys under 14 years of age in coal mines.—Norman v. Virginia-Pocahontas Coal Co., W. Va., 69 S. E. 857.

94.——Vice Principal.—A foreman is the vice principal of the subordinate working under his orders, and assumes the danger arising from the latter's negligence.—Linemueller v. Arthur, La., 53 So. 732.

95. **Mines and Minerals**—Oil Lease.—A lessee with right to bore for oil cannot extent the terms of the lease on the ground that he has failed to find oil.—Cooke v. Gulf Refining Co., La., 53 So. 874.

96. **Municipal Corporations**—Special Tax.—Taxpayer, signing petition for an election to vote on levy of special tax, and joining in movement to have the tax voted, held estopped to sue to have the election declared a nullity.—Burdin v. Police Jury of St. Martin Parish, La., 53 So. 861.

97. **Names**—Signature by Initial.—Where a Christian name is signed by the initial only, the initial of the Christian name and that of the middle name should be considered the Christian name for the purposes of signature.—First Nat. Bank of Opp v. Hacoda Mercantile Co., Ala., 53 So. 802.

98. **Negligence**—Children.—A child aged five years and four months is not chargeable with contributory negligence either as a matter of fact or as a matter of law.—Johnson v. Bay City, Mich., 129 N. W. 29.

99. **Nuisance**—Right to Use Property.—A person held entitled to make reasonable use of his own property and he will not be restrained without clear proof that the use is unreasonable, materially injurious to his neighbor, and permanent.—Herrlich v. New York Cent. & H. R. R. Co., 126 N. Y. Supp. 311.

100. **Officers**—De Facto Officer.—An office is occupied de facto when it is held by one under an appointment or election giving color of title, though the appointment or election be invalid.—State v. Hempstead, Conn., 7. Atl. 422.

101.——Powers.—The rule that a principal is not bound by a contract which his agent makes with himself extends to public officers.—Baars v. Township of Laketon, Mich., 129 N. W. 7.

102. **Partnership**—Action Between Where Common Membership Exists.—When two copartnerships have a common member, neither firm may sue the other at law, but may maintain an equitable action, in which the individual rights of all the members of both firms may be adjusted.—Noyes v. Ostrom, Minn., 129 N. W. 142.

103.——Contracts.—A contract for loan of money, in consideration of an obligation to pay a fixed sum, involving no agreement for the sharing of profits of the business, is not a contract of partnership.—Turregano v. Barnett, La., 53 So. 884.

104.——Conveyances.—A deed executed in the firm name, conveying firm realty, conveys only the interests of the partners who have actually executed it.—Tinnin v. Brown, Miss., 53 So. 780.

105.——Real Eestate.—Where land is bought with partnership money for a partnership purpose, and taken in the name of one of them, held a trust in favor of the partnership results.—Hardin v. Hardin, S. D., 129 N. W. 108.

106. **Patents**—Invention.—That a patentee took but a short step over prior devices in the art, which seems simple, does not necessarily negative invention.—Kellogg Switchboard & Supply Co. v. Dean Electric Co., C. C. A., 182 Fed. 991.

107. **Perpetuities**—Creating Future Estate.—That the interest of the grantee in a deed to growing timber continues indefinitely does not offend the rule against perpetuities.—Cawthon v. Stearns Culver Lumber Co., Fla., 53 So. 738.

108.——Suspension of Power of Alienation.—To make a future estate valid, the suspension of the power of alienation must, under the circumstances, terminate at or before the termination of the second life in being.—Eggleston v. Swartz, Wis., 129 N. W. 48.

109. **Physicians and Surgeons**—Services.—That defendant called plaintiff, a physician, to perform an operation on defendant's brother, held insufficient to raise an implied promise by defendant to pay for the physician's services.—Churchill v. Hebden, R. I., 78 Atl. 337.

110. **Pleading**—Amendment.—The test of whether an amendment to a complaint sets up a new cause of action held to be whether a recovery on the original complaint would bar an action on the amended pleading.—Gropp v. Great Atlantic & Pacific Tea Co., 126 N. Y. Supp. 211.

111.——Complaint.—An objection that the complaint does not state a cause of action is not waived by answer or a general appearance, but may be taken advantage of at any time.—McDonald v. MacArthur Bros. Co., N. C., 69 S. E. 832.

112. **Pledges**—Disposition of Collateral by Pledgee.—A pledgee of collateral security cannot be required to produce and surrender the same as a condition to enforcing the obligation secured, where he has disposed of it, but may only be required in such case to account for its proceeds or value.—Warburton v. Trust Co. of America, C. C. A., 182 Fed. 769.

113. **Principal and Agent**—Imputed Knowledge.—A servant's knowledge of the vicious propensites of a horse when driven on the street held imputable to his employer, so as to make the latter liable for injuries resulting therefrom.—Gropp v. Great Atlantic & Pacific Tea Co., 126 N. Y. Supp. 211.

114.——Liability of Surety.—A surety, executing a bond to release a mechanic's lien, held not entitled to plead as a defense that the contract for the work was obtained by duress.—George Colon & Co. v. East 189th St. Bldg. & Const. Co., 126 N. Y. Supp. 226.

115.——Ratification of Unauthorized Act.—Ratification of an unauthorized act of a stranger may not be implied as a conclusion of law from silence of the party affected by the act.—Uniontown Grocery Co. v. Dawson, W. Va., 69 S. E. 845.

116. **Removal of Causes**—Causes Removable.—An action brought by an alien in a state court against a nonresident, who is a citizen of another state, is removable by the defendant where the requisite amount is involved.—Rones v. Katalla Co., C. C., 182 Fed. 946.

117. **Rewards**—Persons Entitled.—A person employed as a detective by a railroad company held not entitled to share in a reward offered by the company for apprehension and conviction of a criminal, though his efforts contributed thereto.—Forsythe v. Murnane, Minn., 129 N. W. 134.

118. **Sales**—Breach.—Upon breach of a contract of sale, necessary expenses incurred by one party in carrivng it out may be recovered as damages.—Maddox v. Washburn-Crosby Milling Co., Ga., 69 S. E. 821.

119.——Readiness to Deliver.—To entitle a purchaser to recover money paid under a contract of sale upon rescission thereof for cause by the purchaser, he must be ready at all times after rescission to tender the goods, and the goods are not held subject to the seller's order, of the purchaser at any time after rescission treats them as his own.—Comer v. Franklin, Ala., 53 So. 797.

120. **Specific Performance**—Contracts Enforceable.—That a vendor in a contract for sale of land has only a bond for titles, which was known to the purchaser when the contract was made, held not to defeat an action by the purchaser for specific performance.—Mims v. Jones, Ga., 69 S. E. 824.

121. **Street Railroads**—Injury to Passenger.—Passenger on front platform of motor car may assume that, if there is any danger requiring the closing of gates, they will be closed.—McMahon v. New Orleans Ry. & Light Co., La., 53 So. 857.

122. **Taxation**—Tax Deed.—Where tax titles were invalid, one purchasing such titles from the holder thereof was entitled to receive from the original owner of the land only the amount paid for the titles, as a condition precedent to quieting title.—Morrison v. Semer, Mich., 129 N. W. 1.

123.——Tax Sale Certificates.—Owner of tax sale certificates may pay subsequent general taxes and obtain receipts from the county treasurer, and the amounts paid shall constitute additional liens on the land.—State v. Furstenau, N. D., 129 N. W. 81.

124. **Trusts**—Following Trust Property. — A person who has been induced through fraud to part with his money or other property may recover his money or property or the proceeds thereof, where he can trace or identify it, but the identification cannot be aided by a legal presumption, as fraud alone does not create equities superior to those of general creditors.—Stilson v. First State Bank of Corwith, Iowa, 129 N. W. 70.

125.——Appointment of New Trustee.—The validity of the appointment of a substituted trustee and the power of the trustee under it held not open to collateral attack — Evangelical Lutheran Church of the Epiphany v. Rabell, 126 N. Y. Supp. 306.

126.——Resulting Trusts.—For a resulting trust in land to arise when the purchase money is paid by one person and the land is conveyed to another, the payment must actually come from the cestui que trust.—Anderson v. Gile, Me., 78 Atl. 370.

127. **Vendor and Purchaser**—Constructive Notice.—The recording of a deed in the Mortgage Record Book held not to render the record ineffectual as constructive notice to subsequent purchasers.—Cawthon v. Stearns Culver Library Co., Fla., 53 So. 738.

128. **Water and Water Courses**—Diversion.—The burden is on a riparian owner seeking to enjoin another from diverting waters, to show that the course in which the waters were confined, constituted a water course within the legal meaning of that term.—S. O. & C. Co. v. Ansonia Water Co., Conn., 78 Atl. 432.

129. **Wills**—Construction.—Where testator gave two-thirds of his residuary estate to A., and the other one-third to B., and B. died before testator, his share does not pass to A. under the will, but remains undisposed of by the will.—In re Kingss County Trust Co., Sur., 126 N. Y. Supp. 287.